



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

JOHN A. LASOTA, JR.
ATTORNEY GENERAL

June 13, 1978

Mr. Ernesto G. Munoz
Executive Director
Arizona State Justice Planning Agency
Continental Plaza Building, Suite M
5119 North 19th Avenue
Phoenix, Arizona 85015

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ARIZONA ATTORNEY GENERAL

Re: 78-108 (R78-81)

Dear Mr. Munoz:

You have asked our opinion whether elected officials are "employees of federal, state or local governments" for purposes of the Juvenile Justice and Delinquency Prevention Act of 1974.

Section 223 (a)(3)(d) of the Act provides that a majority of the members of the State Juvenile Justice Advisory Board, including specifically the chairman, shall not be full-time employees of the Federal, State, or local government. The Office of General Counsel for the Law Enforcement Assistance Administration in Opinion Number 76-29 has determined that the qualifications for members of the State Juvenile Justice Advisory Board shall be determined under applicable state law. Consequently, we must look to Arizona law for a resolution of your question.

Throughout Title 38 of the Arizona Revised Statutes, the term "officer" and "public officer" are used in contradistinction to the term "employee". For example, A.R.S. § 38-101(3):

'Officer' or 'public officer' means the incumbent of any office, member of any board or commission, or his deputy or assistant exercising the powers and duties of the officer, other than clerks or mere employees of the officer.

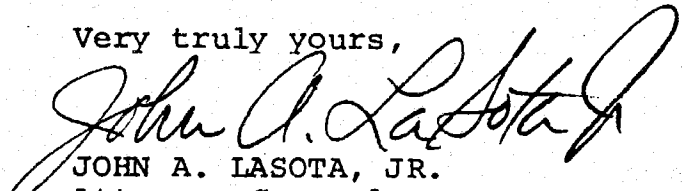
The dichotomy between "officer" and "employee" can also be found in other areas of Title 38. See, e.g., A.R.S. § 38-502 (conflict of interest); A.R.S. § 38-601 (salaries); A.R.S. § 38-611 (exempt positions); A.R.S. § 38-621 (travel expenses); A.R.S. § 38-651 (health and accident insurance). See, also, Stapleton v. Frohmiller, 53 Ariz. 11, 85 P.2d 49 (1938), distinguishing between a public office and employment.

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Consequently, it is the opinion of this office that an elected official is not a State "employee" for purposes of the Juvenile Justice and Delinquency Prevention Act of 1974.

Very truly yours,


JOHN A. LASOTA, JR.
Attorney General

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